

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

PHAMILY PHARMACY
Respondent

Case Nos.: I-00-30121
I-00-30152

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Code §§ 6-2701 *et seq.*) (1981 ed.) and Title 2 Chapter 20 of the D.C. Code (D.C. Code § 2-2010(a)(1)). By Notice of Infraction (00-30121) served December 11, 2000, Respondent Phamily Pharmacy was charged with a violation of D.C. Code § 2-2012(a)(1) (1981 ed.) for allegedly failing to have a current biennial inventory of controlled substances.¹ The Notice of Infraction alleged that Respondent

¹ D.C. Code § 2-2010(a)(1) (1981 ed.) provides: “The Mayor may refuse the issuance or renewal, or may revoke, or may suspend for not more than 90 days, a license pursuant to this chapter for any one or a combination of the following reasons: (1) Conviction of any felony, or a finding by the Mayor that any provision of this chapter has been violated, or that any law or regulation of the District of Columbia or of the United States relating to drugs has been violated by any person named in the application for pharmacy licensure” At the hearing, the Government referenced 21 C.F.R. 1304.11 as the specific federal law that allegedly had been violated. 21 CFR 1304.11 provides in relevant part: “(c) Biennial inventory date. After the initial inventory is taken, the registrant shall take a new inventory of all stocks of controlled substances on hand at least every two years. The biennial inventory may be taken on any date which is within two years of the previous biennial inventory date.”

violated D.C. Code § 2-2012(a)(1) (1981 ed.) on August 24, 2000 at 6323 Georgia Avenue, N.W., and sought a fine of \$500.00.

Respondent failed to answer the Notice of Infraction within the allotted twenty (20) days from service (fifteen (15) days plus five (5) days for mailing pursuant to D.C. Code §§ 6-2712(e), 6-2715 (1981 ed.)). Accordingly, on January 25, 2001, this administrative court issued an order finding Respondent in default on Notice of Infraction (00-30121), assessing a \$500.00 statutory penalty pursuant to D.C. Code § 6-2704(a)(2)(A) (1981 ed.), and requiring the Government to serve a second Notice of Infraction in accordance with D.C. Code § 6-2712(f) (1981 ed.). The Government served the second Notice of Infraction (00-30152) on February 1, 2001.

Respondent failed to answer the second Notice of Infraction (00-30152) within the allotted time. D.C. Code § 6-2712(f) (1981 ed.). Accordingly, on April 10, 2001, this administrative court issued a final default order finding Respondent in default on the second Notice of Infraction, assessing an additional statutory penalty of \$500.00 pursuant to D.C. Code § 6-2704(a)(2)(B) (1981 ed.), and scheduling an *ex parte* proof hearing in accordance with D.C. Code § 6-2713 (1981 ed.) for May 9, 2001.

The *ex parte* proof hearing convened as scheduled on May 9, 2001. Jawara Kasimu-Graham, the charging inspector in the case, appeared and testified on behalf of the Government. The Government also had previously submitted Petitioner's Exhibits 100 and 101 ("PX-100 and

“PX-101”) which were admitted into evidence. No one appeared on behalf of Respondent. The record was closed at the conclusion of the hearing.

II. Findings of Fact

Based upon the testimony the testimony in the record, my evaluation of the credibility of the witness and the documents admitted into evidence, I now make the following findings of fact:

1. At the time of the alleged violation, Respondent maintained a current District of Columbia Pharmacy License (#RX9400241). PX-101.
2. Respondent’s last known business address is 6323 Georgia Avenue, N.W.
3. The Government served the first Notice of Infraction (00-30121) upon Respondent at its last known business address by regular mail on December 7, 2000 as reflected in the Certificate of Service on the back of the Notice of Infraction. The Government served the second Notice of Infraction (00-30152) upon Respondent as its last known business address by certified mail, return-receipt requested on February 1, 2001 as reflected in the Certificate of Service on the back of the Notice of Infraction and the February 2, 2001 return-receipt executed on behalf of Respondent. PX-100.
4. This administrative court served the January 25, 2001 default order upon Respondent at its last known business address by U.S. Mail/Delivery

Confirmation on January 26, 2001 as reflected in the Certificate of Service attached to the order. This administrative court served the April 10, 2001 final default order upon Respondent at its last known business address by U.S. Mail/Delivery Confirmation on April 12, 2001 as reflected in the Certificate of Service attached to the order.

5. Upon inspection of Respondent's pharmacy on August 24, 2000, the charging inspector determined that, among other things, the most current biennial inventory of controlled substances that Respondent had available was dated March, 1996. The most current biennial inventory that should have been available should have been dated March, 2000. The inspector also noted that Respondent did not have a March, 1998 biennial inventory. Respondent's pharmacist on duty, G. Akunji, acknowledged the inspector's finding regarding the out-of-date biennial inventory by initialing the entry on the August 24, 2000 Pharmacy Inspection Report. PX-101.
6. The inspector left a copy of the August 24, 2000 Pharmacy Inspection Report with Respondent at the conclusion of the inspection.
7. There is nothing in the record explaining Respondent's failure to timely respond to the first and second Notices of Infraction.

III. Conclusions of Law

1. Respondent had sufficient notice of the charge in this case as mandated by the Due Process Clause and the Civil Infractions Act of 1985. Service of the Notices

of Infraction and this administrative court's orders by mail to Respondent's last known business address, *i.e.*, 6323 Georgia Avenue, N.W., constitutes sufficient notice. *See Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985); D.C. Code § 6-2715 (1981 ed.).

2. On August 24, 2000, Respondent failed to maintain a current biennial inventory of controlled substances for its pharmacy.² D.C. Code § 2-2010(a)(1) (1981 ed.); 21 C.F.R. 1304.11; PX-101. A fine of \$500.00 is authorized for this violation for which Respondent shall be held liable. *See* 16 DCMR 3220.2(i).
3. Pursuant to D.C. Code § 6-2712 (1981 ed.), if a respondent has been duly served a Notice of Infraction and fails, without good cause, to answer that Notice of Infraction within the established time limits, the respondent shall be liable for a statutory penalty equal to the applicable fine, and the Government is required to serve a second Notice of Infraction. D.C. Code §§ 6-2704(a)(2)(A), 6-2712(f) (1981 ed.). If a respondent similarly fails to answer the second Notice of

² While the Notice of Infraction cites a violation only of D.C. Code § 2-2010(a)(1) (1981 ed.), the factual description of the charge contained in the Notice of Infraction provides "no current controlled substance biennial [sic] inventory". This information, along with Respondent's documented prior notice of the nature of the violation as reflected in the August 24, 2000 Pharmacy Inspection Report, provided Respondent sufficient notice of the nature of the charge against it in this case. *See, e.g., DOH v. Smith*, OAH No. I-00-40049 at 5-6 (Final Order, August 31, 2001) (noting Civil Infraction Act of 1985 and Due Process Clause require that a respondent be provided with full and fair notice of charge and a reasonable opportunity to prepare a defense); *DOH v. D.C. Arc, Inc.*, OAH No. I-00-40080 at 3-5 (Order Denying Motion To Dismiss, July 24, 2000) (adequate notice of charge found where Deficiency Statement received by Respondent was related to issued Notice of Infraction and cited specific federal regulation allegedly violated).

Infraction, the statutory penalty doubles. D.C. Code § 6-2704(a)(2)(B) (1981 ed.).

4. Respondent has not responded in these proceedings, and, based on the existing record, good cause has not been established for its failure to timely answer the first and second Notices of Infraction. Accordingly, Respondent is liable for a statutory penalty of \$1,000.00 in addition to the assessed \$500.00 fine. *See* D.C. Code § 6-2712(f) (1981 ed.).

IV. ORDER

Based on the foregoing findings of fact and conclusions of law, it is hereby this ____ day of _____, 2001:

ORDERED, that Respondent shall pay a total of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00)** in fines and statutory penalties in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715 (1981 ed.)); and it is further

ORDERED, that, if Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order.

D.C. Code § 6-2713(i)(1) (1981 ed.), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Code § 6-2713(f) (1981 ed.), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Code § 6-2713(i) (1981 ed.) and the sealing of Respondent's business premises or work sites pursuant to D.C. Code § 6-2703(b)(7) (1981 ed.).

/s/ **10/25/01**

Mark D. Poindexter
Administrative Judge